

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

50912

FILE: B-183480

DATE: SEP 4 1975

97554

**MATTER OF: Proper method of computing constructive  
costs of travel**

**DIGEST:** Although 2 JTR para. C10157-2d requiring the actual costs versus the constructive costs for transportation and per diem to be compared separately in determining employee's reimbursement when, for personal reasons, privately owned conveyance is used in lieu of common carrier transportation was initially promulgated on basis of our decision, the regulation on which our decision was based has been superseded. We interpret the current regulation, FTR para. 1-4.3, as requiring agency to determine employee's reimbursement for such travel by comparing total actual costs to total constructive costs, and the JTR should be amended accordingly.

This action involves a request from Mr. Paul D. Phillips, a member of the Per Diem, Travel and Transportation Allowance Committee, Department of Defense, for a decision as to the propriety of amending 2 Joint Travel Regulations para. C10157-2d (change 104, June 1, 1974), which provides the method for determining an employee's entitlement to reimbursement when a privately owned conveyance is used for official travel as a matter of personal preference in lieu of common carrier transportation.

When, for personal reasons, a privately owned conveyance is used for official travel, 2 JTR para. C10157-2d (change 104, June 1, 1974) provides for determining separately the reimbursement allowable for transportation costs and the reimbursement allowable as per diem by comparing separately the actual versus the constructive costs of transportation and per diem. Mr. Phillips indicates that this provision was initially prescribed on the basis of our decision. 45 Comp. Gen. 592 (1966). Although he points out that the travel regulation, Bureau of the Budget (BOB) Circular No. A-7, para. 3.5b(2) (March 1, 1965), on which our decision was based has been amended since our decision was issued, he states that there does not appear to be a major difference between that provision and the current regulation, Federal Travel Regulations (FPMR 101-7) para. 1-4.3 (May 1973). He states that in fact the

language of these two provisions are substantially similar and thus, that separate limitations on mileage and per diem appear to be still required. However, in view of a recent settlement certificate issued by the Transportation and Claims Division of our Office, he questions whether 2 JTR para. C10157-2d (change 104, June 1, 1974) may be amended to provide reimbursement for such travel on the basis of a total of the actual mileage plus the actual per diem for the travel, not to exceed the total of the constructive cost of common carrier transportation plus constructive per diem by that mode of transportation.

In 45 Comp. Gen. 592, supra, we concluded that separate limitations were required on the payment of mileage and per diem. That decision was based on our interpretation of section 3.5b(2) of BOB Circular No. A-7 (March 1, 1965), which prescribed in paragraphs (a) and (b) separate methods for determining mileage and per diem payments when, for personal reasons, employees elect to use their own automobile for official travel.

However, that provision was superseded by section 4.3 of Office of Management and Budget (OMB) Circular No. A-7 (August 17, 1971). Section 4.3 (currently, FTR para. 1-4.3 (May 1973)) provides for payment for the use of a privately owned conveyance in lieu of common carrier transportation as follows:

"\* \* \* Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 2.2d payment for such travel shall be made on the basis of the actual travel performed \* \* \* plus the per diem allowable for the actual travel but the total allowable will be limited to the total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation. \* \* \*" (Emphasis supplied.)

Although the language and style of this provision may be relatively similar to that of BOB Circular No. A-7, section 3.5b(2) (March 1, 1965), we believe that it is significant that the provision was revised to refer to "the total allowable" and "the total constructive cost." We believe that these phrases were added in OMB Circular No. A-7, section 4.3 (August 17, 1971), to effect a

B-183480

substantive change. Accordingly, we believe that section 4.3 of OMB Circular No. A-7 (August 17, 1971), and the current regulation, FTR para. 1-4.3 (May 1973), should be interpreted as requiring an agency to determine an employee's entitlement to reimbursement for such travel on the basis of his total actual travel costs (transportation and per diem), limited to the total constructive travel costs (transportation and per diem).

This conclusion is supported by the explanation of the revision of section 4.3, OMB Circular No. A-7 (August 17, 1971), contained in the "Summary of Changes" issued by the Office of Management and Budget on August 17, 1971, in connection with the revision of that circular. The "Summary of Changes" explains the purpose of the revision of section 4.3 as follows:

"\* \* \* Reworded to provide that total allowance for actual travel (including per diem) will be limited by total constructive allowance (including per diem)."

In view of the above, 2 JTR para. 10157-2d should be revised to provide, in accordance with FTR para. 1-4.3 (May 1973), that the total amount allowable for the use of a privately owned conveyance as a matter of personal preference in lieu of common carrier transportation is limited to the total amount of the constructive cost of common carrier transportation plus constructive per diem by that mode of transportation.

R.F. KELLER

Deputy Comptroller General  
of the United States